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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re SARAH S., a Person Coming Under  
the Juvenile Court Law.

ORANGE COUNTY SOCIAL SERVICES  
AGENCY,

Plaintiff and Respondent,

v.

VICTOR S.,

Defendant and Appellant.

G058787

(Super. Ct. No. 19DP0003)

O P I N I O N

Appeal from an order of the Superior Court of Orange County, Dennis J. Keough, Judge. Affirmed.

Elizabeth Klippi, under appointment by the Court of Appeal, for Defendant and Appellant.

Leon J. Page, County Counsel, Karen L. Christensen and Deborah B. Morse, Deputy County Counsel, for Plaintiff and Respondent.

No appearance for the Minor.

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This is an appeal by the father, Victor S., of the juvenile court's disposition order in this dependency matter. The court determined the child, Sarah S., would be in substantial danger if returned to the care of Victor, and placed her with her mother, Katherine M.<sup>1</sup> The father contends the court improperly delegated its authority to control visitation to the Orange County Social Services Agency (SSA) and that his due process rights were violated when visits were suspended. The father also argues the juvenile court erred by removing Sarah from his custody pursuant to Welfare and Institutions Code section 361, subdivision (c),<sup>2</sup> because the court's order was not supported by substantial evidence. Because we find that none of these issues have merit, we affirm the order.

## I FACTS

On December 30, 2018, Sarah and a half-sibling (who is not part of this appeal) were detained on allegations of physical abuse and general neglect after a relative noticed a hand-shaped bruise on Sarah's cheek in a photograph. Sarah, who was 10 months old at the time, was placed on a hospital hold at Children's Hospital of Orange County (CHOC).<sup>3</sup> Sarah was in the care of both parents, but neither parent was able to provide a consistent explanation for the injury.

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<sup>1</sup> The mother filed a brief pursuant to *In re Sade C.* (1996) 13 Cal.4th 952, stating no arguable issues had been found. Her appeal was dismissed.

<sup>2</sup> Subsequent statutory references are to the Welfare and Institutions Code.

<sup>3</sup> The older child, E.R, age 6 at the time, lived with the maternal grandmother with the mother's consent because he did not like Victor, his stepfather. According to the mother, this was because her family had "trash talked him" in E.R.'s presence. E.R. denied violence or abuse occurred in the home when he lived there. E.R. was released to the maternal grandmother's care.

There were no prior incidents regarding the family, and both parents denied violence, as did the mother's sister, who had lived with them for a time. The mother<sup>4</sup> stated the father would ignore her, but denied violence. With respect to Sarah's injury, the mother stated that on the night before the injury appeared, she put the child to sleep in the child's bed and went to sleep in her own bed. The father was not home. She woke up later in the evening with the child in bed with her and felt as if she was pressed up against the child, suggesting perhaps the mark had occurred that way. She noticed the father asleep on the floor, and both she and the child moved to the floor to sleep with the father. The father then put the child in her own bed, and the parents went to sleep in their bed. She did not notice the mark until she fed the child the next morning, and thought perhaps the child had hit herself with something or that it had occurred when the child was pressed against her. She did not hear the child cry or see the child fall and injure herself.

When interviewed, the father further stated he had no mental health history, criminal history, or drug or alcohol use. He denied hitting Sarah. With respect to the night before the injury was observed, he stated that when he arrived home, the mother was breastfeeding the child and all three of them fell asleep in the living room. When he awoke the next morning, the child was in her room, and he left for work around 8:00 a.m. He said he did not know about the mark on Sarah's face until he was called by the police. The father blamed SSA's involvement on the mother's family, stating members of her family had threatened to take the child away from him.

SSA filed a petition pursuant to section 300, subdivisions (a) and (b)(1), with respect to Sarah. The petition alleged she had four linear marks and/or bruises on her face near her left eye, and medical opinion was that the marks had been caused by a slap.

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<sup>4</sup> Because the mother is not a party to this appeal, we include only facts about her relevant to the father's appeal.

The juvenile court detained the child at the detention hearing on January 3, 2019. The father subsequently invoked his Fifth Amendment rights as to the petition's allegations.

The mother was interviewed again and stated only she and the father were home the night Sarah's injury occurred. She did not believe Sarah was in pain, and therefore she did not seek medical attention for the injury. She stated that she did not hit Sarah and could not imagine the father had or would ever do so.

SSA also interviewed the maternal grandmother, who stated the father had acted harshly with E.R., which was the reason E.R. had been living with her for about six months. The maternal grandmother stated the father restricted the mother's communication with her and was domineering. The mother's depression, which she had previously suffered from, had grown worse since she had been with the father. She described the father's discipline techniques as "rigid." She had never seen domestic violence between the parents or witnessed either of them physically discipline the children.

SSA also interviewed the maternal aunt, who had lived with the mother, but moved out after the father moved in following Sarah's birth. She described the father as strict and stated that he would be verbally harsh with E.R. over minor matters. She witnessed the father tell E.R. that "boys don't cry." She also stated he was argumentative and that the mother did not stand up for E.R. or the family. Moreover, the father did not like the mother talking to anyone in her family and became upset if she did. She visited the mother when the father was not home.

On the day Sarah's injury appeared, the mother spoke to the maternal aunt in the late morning. The mother said that "something happened to Sarah but I need to show you." She sent the maternal aunt a picture, and said the injury was "big" and she "did not know if the child had a concussion." The maternal aunt said it looked like a

handprint, and the mother agreed, stating she would never hit the child. This was the first time the maternal aunt had seen an injury on the child.

SSA spoke with the child protection medical director at CHOC, who was of the opinion that Sarah's injuries were inflicted by a hand slap. She did not believe the injury could have been inflicted any other way.

In the meantime, the parents had reportedly separated. The mother was living in Orange County, and the father was living in Corona. The mother was attending reunification services and visiting Sarah several times a week.

In February 2019, the social worker spoke to the father, who expressed his frustration with visitation. He stated he believed the maternal grandmother (which was where Sarah had been placed, with her sibling E.R.) was making it difficult for him to visit. The social worker asked what the issues were, and noted the paternal grandmother had been granted permission to supervise visits to avoid these issues. The father stated the maternal grandmother was not returning phone calls, and on one occasion, cut a visit short because it was the child's nap time. The social worker agreed to reach out to the maternal grandmother to address these issues. Some scheduling issues were difficult to resolve because the paternal grandmother had a fluctuating schedule.

The father also told the social worker he wanted the child returned immediately, and asked if she could be returned to the mother if he took the blame for the injury. He "demanded to know what it was he would need to do in order to have the child returned to his care to which the father was encouraged to sign the referral form the [social worker] was holding to initiate the recommended services being offered." The father asked if doing so would allow the child to be returned back to him that day, the social worker said that would not be the recommendation. "The father became increasingly agitated as evidenced by his raised voice and belligerence and expressing that [SSA] wants him to do services but not return his child." He raised his voice and swore at the social worker, demanding that the social worker tell him who was believed

to have struck the child. He dismissed the doctor's opinion that the mark was a slap. The social worker again encouraged him to participate in services, and the father stated if he participated in services he needed to have the child returned the same day. Ultimately, the father stated he would not participate in services until SSA returned the child, and again denied he was responsible for Sarah's injury. He told the social worker "[t]hen [expletive] your services, talk to my attorney then."

Further inquiries revealed that the father had not made previous complaints about his visitation difficulties. SSA followed up with the maternal grandmother, who stated the father contacts her on the day he wants to visit, and she generally accommodates him. She stated not having notice before the day he wanted to visit does make accommodation difficult.

The jurisdiction hearing was held on March 6, and the court accepted a signed stipulation at that time. The parents pleaded no contest to the amended petition. The father enrolled in a parenting class and agreed to begin therapy.

In early April, the social worker had a phone call with the father. The father stated both that he was not with the mother and that he would be willing to move out of the home in order to allow Sarah to be released "to the mother on a Conditional Release to Intensive Supervision Program (CRISP) condition." The father had not begun counseling services. The father informed the social worker that he had been "researching the law" and that the social worker is not the "dictator." The social worker agreed that SSA could only make recommendations to the judge. The father asked if the social worker knew what "li[able]" meant and stated that SSA "was li[able] for his daughter not being in his care and insisted on knowing why he had to complete services when he did nothing wrong. The father added that he has completed one of his two services [the parenting class]; therefore, the [social worker] needed to 'hold up his end of the bargain' and allow him CRISP as well."

The following day, the social worker contacted the father to inform him of the possibility of extending the CRISP release to him and stated SSA would like to perform a home assessment. The father questioned the need for this and stated he would need to speak with the mother. They eventually agreed, and an assessment was conducted. Shortly thereafter, the child was released to the parents pursuant to a CRISP agreement that all parties consented to. The father began participating in weekly therapy.

CRISP appeared to be going well and the CRISP social worker recommended family maintenance. The disposition hearing scheduled for May 13 was continued, and the next day, the mother contacted the social worker and stated she could no longer live with the father. The social worker described her as being “hesitant” when asked about domestic violence, and she first denied it had occurred. She later stated, however, that the father had been verbally abusive and had grabbed her arm, leaving visible bruising which was later observed by the social worker. The mother, Sarah, and E.R. went to the maternal grandmother’s home and the social worker told her to remain there. The social worker also recommended the mother seek a restraining order. The court ordered the father removed from the CRISP agreement, and the father did not object to the court issuing relevant orders. At the next court date, family maintenance was recommended as to the mother only. The mother was also granted a temporary restraining order. In a subsequent telephone call with the social worker in May, the father stated “he would be seeking full custody of [Sarah] due to the mother’s lies.”

On June 12, the father called the social worker and stated the mother’s request for a restraining order had been denied. He wanted to go and pick up Sarah “as he has full custody of the child.” The social worker informed the father that Sarah was currently under the CRISP order and in the care of the mother, but that the social worker would inform the juvenile court of the new circumstances and set up a visitation schedule.

The father was subsequently granted 14 hours of unmonitored visitation by the court, with SSA authorized to “liberalize and/or restrict visitation and visitation protocols.” According to SSA, the father apparently believed he could decide when he wanted to visit the child and inform the mother without regard to her schedule or reasonable notice. “The father insisted that he did not need to give any notice as the [j]udge told him that the [sic] can pick up his daughter whenever he wanted to do [sic] without notice. The father [was] also informed that he could have as many hours as he would like exceeding 14 hours as [his attorney told him]. Additionally, the father reported that if he did not see his child today he would let his attorney know that the Agency is not allowing him to see his child. The father was informed that the [social worker] was able to coordinate a 4 hour visit . . . . Additionally, the father was encouraged to discuss with his attorney that the 14 hours of visitation was at the discretion of the Agency and not at his free will.”

The social worker also told the father that not having a visitation plan in place would prove difficult and it would benefit both him and the mother to have a schedule in place for dates and times of visits. The father told the social worker he did not need to make anyone aware for him to go and pick up his child. The social worker told him he could not just appear at the mother’s home and demand the child, and asked if certain days the father had previously indicated would work for him were still amenable. He was also offered the option of providing the mother with 24 hours’ notice. The father did not respond, told the social worker he would be seeing his daughter that day, and ended the call.

The mother told the social worker the father was texting her while she was at work, demanding to pick up the child two hours later. The social worker proposed the father’s previously indicated days as a suggested visitation schedule, and the mother agreed.



In a call with the father the following day, the father again repeated to the social worker that he did not have to notify anyone of what time he was planning to pick up the child. These types of issues continued to recur over the following days. During one custody exchange in June, the father swore at the mother and a physical altercation occurred between the father and the mother's family members that resulted in the police being called. Thereafter, the social worker informed the mother that exchanges would take place at the police department and that visits would be suspended until the father could provide a set schedule of days and times. The mother agreed.

During a subsequent phone call, the father characterized himself as the victim of the mother's relatives during the incident. He was asked "approximately 5-6 times" by the social worker to agree to a visitation schedule. "However, the father refused and insisted that his work schedule will not allow him to have a concrete visitation schedule and the judge informed him that he gets 14 hours of visitation and that is what he will get. The father was informed that due to issues thus far, visitation would need to be suspended until he could provide a visitation schedule for both the mother and his safety and to ensure visitation guidelines are being met. The father insisted he would not do so and disconnected the phone call."

The father subsequently attended services, including counseling, and his counselor believed his anger had decreased as a result. Thereafter, however, the social worker received a message from the father's new counselor stating the father did not seem willing to let go of his anger, appeared volatile around those he believed had wronged him, and would only be satisfied if he had full custody of his daughter. The therapist was concerned about returning Sarah to the father.

When the social worker attempted to contact the father shortly thereafter, the father refused to speak to him. The father's therapy was terminated the following week, with the therapist stating he had deteriorated and his condition warranted a psychiatric evaluation.

At a hearing on August 22, the court ordered the children released to the mother and terminated the CRISP conditions. The court continued the disposition hearing.

As of November, the father refused to speak with the social worker and directed all communications must go through his attorney. The social worker repeatedly tried to contact counsel to ask if the father wanted to reenroll in therapy, but did not receive a response. In the meantime, the mother and children were doing well.

At the continued disposition hearing held on January 17, 2020, the father testified he believed his daughter was removed over false allegations. He focused on the impact of the SSA case on him, rather than on why the case had occurred in the first place. He blamed the mother's relatives and the mother, calling her a liar. He also blamed his lack of consistent visitation on his attorney and his social worker.

At the conclusion of the hearing, the court ordered Sarah a dependent. Among other things, the court found SSA's reports were "replete" with attempts to sort out the visitation issues after June, but the father was intransigent and refused to cooperate. The court maintained custody with the mother and removed Sarah from the father's custody. The court then terminated jurisdiction and the clerk was directed to file custody and visitation orders with the family court. Legal and physical custody and primary residence were awarded to the mother, and the court ordered six hours of supervised visitation per month for the father. The orders were subsequently filed with the family court.

## II DISCUSSION

### *A. Notice of Appeal*

SSA claims the father's notice of appeal is fatally insufficient, but given the rule that we liberally construe notices of appeal in favor of their sufficiency, we reject this argument. (See *In re J.F.* (2019) 39 Cal.App.5th 70, 74.)

### *B. Visitation Issues*

The father asserts his visitation was “de facto” terminated by the social worker in July 2019, which he claims is both an improper delegation of authority and a violation of his due process rights.

We review issues of law de novo (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 222), but exercises of the court's discretion are reviewed for abuse of that discretion (*In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314).

As a threshold question, SSA suggests that because dependency was terminated, there is no remedy for the father's claims even if we were to accept them as true. Essentially, visitation issues arising during the dependency period are now moot. “[T]he critical factor in considering whether a dependency appeal is moot is whether the appellate court can provide any effective relief if it finds reversible error.” (*In re N.S.* (2016) 245 Cal.App.4th 53, 60.) We agree; if there are facts the court found regarding visitation that are incorrectly reflected in the record, as the father claims, those facts are relevant to his claim of a lack of substantial evidence to support the order, which we discuss below. But they are not grounds for reversal of the disposition order and reinstatement of dependency, or for return of the child to his care. Nor do we see any benefit to the child to do so.

Moreover, were we to address the issue on its merits, we would find ample authority for the juvenile court's ability to delegate to SSA the management of visitation.

(*In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374.) The fact that the father relies on, that SSA “de facto” halted his visits entirely “in July 2019” is not reflected in the record. After the altercation between the father and the mother’s family on June 28, the social worker suspended visits until the father would agree to a schedule for everyone’s benefit and safety. It was the father’s recalcitrance and difficult attitude regarding visitation that led to the state of affairs of which he now complains. While he spends ample time blaming the court, SSA, and his attorney for his lack of subsequent visitation, he takes no responsibility for his inflexible, domineering approach to the issue. There is no record of communication from either the father or his attorney to the social worker about resuming visitation.

Accordingly, we do not find the necessary fact – that SSA “de facto” ended visitation – to entertain the father’s claims of a violation of separation of powers, improper delegation, or due process violations, even if we were to find the issue was not moot. He knew what was necessary to continue visitation, and chose not to engage. Further, the record does not reflect any attempt at emergency court action to resume visits; indeed, when SSA informed the court of the incident that led to suspension of visitation, there was no objection filed by the father.

Accordingly, even if the question of visitation in a terminated dependency were not moot, we would find no merit in the father’s substantive arguments.

### *C. Substantial Evidence*

The father next claims the court’s disposition orders lacked substantial evidence. ““A section 300 dependency hearing is bifurcated to address two distinct issues. First, at the jurisdictional hearing, the court determines whether the child falls within any of the categories set forth in section 300. If so, the court may declare the minor a dependent child of the court. [Citation.] Then, at the dispositional hearing, the court must decide where the child will live while under its supervision, with the

paramount concern being the child’s best interest. [Citation.] The juvenile court has broad discretion to decide what means will best serve the child’s interest and to fashion a dispositional order accordingly.” (*In re Carl H.* (2017) 7 Cal.App.5th 1019, 1037.)

To justify removal from a parent’s custody, the juvenile court must find by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor’s physical health can be protected without removing the minor from the minor’s parent’s . . . physical custody.” (§ 361, subd. (c)(1).)

We review such orders for substantial evidence. “The issue of sufficiency of the evidence in dependency cases is governed by the same rules that apply to all appeals. If, on the entire record, there is substantial evidence to support the findings of the juvenile court, we uphold those findings. [Citation.] We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence. Rather, we draw all reasonable inferences in support of the findings, view the record most favorably to the juvenile court’s order, and affirm the order even if other evidence supports a contrary conclusion. [Citation.] The appellant has the burden of showing the finding or order is not supported by substantial evidence.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 250-251.)

The father states there are numerous “mitigating factors compelling a finding that the minor’s removal . . . was unwarranted.” First, he claims it is relevant that he was no longer living with Sarah. While removal of an offending parent is an option under the statute, it is not decisive or sufficient in all cases. (*In re Michael S.* (2016) 3 Cal.App.5th 977, 983-985.) Here, the parents have a history of an on-again, off-again relationship. The father’s current status out of the home has little meaning.

While the father touts his completion of some services, he ignores the serious evidence that weighed strongly against him. His continued anger issues, as

reflected by his therapist and the most recent issues with the mother; his continued desire to blame everyone else involved in the case for the situation; his inflexibility and tacit threats toward the social worker; and his determination to have things his way or not at all are just a few of the worrisome issues that were before the court.

Further, his argument that reasonable efforts were not made to avoid removal are simply specious. The record reflects that SSA attempted early and often to get the father to participate in services, but instead, he seemed to participate only on his own terms. His testimony reflected that he gained little to no insight from his participation, and the report of his most recent therapist suggested that he was actually getting worse. Overall, the father was aggressive and defiant when it came to services.

The case law the father relies on is simply inapposite and readily distinguishable on the facts. Unlike the parent in one of those cases, *In re Henry V.* (2004) 119 Cal.App.4th 522, the father was given the opportunity to parent his child during the CRISP period. Instead of doing so, he managed to involve himself in a physical altercation that was frightening enough for the mother to remove herself from the home. Such altercations create a substantial risk to the children in the home, especially when the children are young. (*In re John M.* (2013) 217 Cal.App.4th 410, 418-419, overturned on other grounds in *In re R.T.* (2017) 3 Cal.5th 622, 628.)

Another case the father relies on, *In re Ashly F.* (2014) 225 Cal.App.4th 803, also fails to help his cause. In that case, the appellate court reversed the juvenile court's order based on a lack of reasonable efforts and reasonable means to protect the children. But in that case, the appellate court stated the juvenile court should have considered removing the mother, the offending parent, as reasonable means to maintain the children in their father's custody. That mirrors what the court did here. Further, the mother in *Ashly F.* demonstrated insight and a willingness to take responsibility for her actions. (*Id.* at p. 810.) Here, the father has thrown away every opportunity to reunite

with his daughter, apparently deciding that winning some battle with SSA was more important.

The court had clear and convincing evidence to find removal appropriate in this case. We find no error.

### III

#### DISPOSITION

The juvenile court's order is affirmed.

MOORE, J.

WE CONCUR:

BEDSWORTH, ACTING P. J.

IKOLA, J.